



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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To: Planning Board

From: Michael Zehner, Director of Planning & Development  
Holly White, Principal Planner

Date: March 15, 2021

Subject: Consideration of text amendments to the Unified Development Ordinance pertaining to electric vehicle battery charging and battery exchange stations

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### OVERVIEW AND BACKGROUND

Given the Town's interest in the installation of an electric vehicle charging station, as well as recent private interest, Staff determined that amendment to the Town's regulations concerning these facilities was necessary. Generally, there are some inconsistencies within current regulations with respect to terminology, where such charging facilities may be located based upon zoning district, and the standards that such facilities are subject to.

The Board of Commissioners, at their March 3, 2021 meeting, authorized Staff to pursue amendments to the Unified Development Ordinance to address necessary changes.

### CODE CONSIDERATIONS

Currently, Table 6.6, Table of Uses and Activities, indicates "Battery Charging/Exchange Station" to be a permitted use (without Conditional Use Permit) in the C-1, C-2, and C-3 zoning districts, subject to supplemental regulations contained in Section 7.17. Section 7.17, Battery Charging/Battery Exchange, provides the supplemental regulations for these uses, indicating that they are permitted as an accessory use (the full text of Section 7.17, with proposed markups, is included under **Staff Recommendation**).

Additionally, Table 10-2, Required Parking by Use, provides that the Battery Charging/Exchange Station use requires one parking space for each charging station.

Finally, there are several applicable definitions within the UDO associated with this use and the Town's regulations thereof, as follows:

**Battery charging station** means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed federal, state, and/or local requirements.

**Battery exchange station** means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted

battery with a fully charged battery through a fully automated process, which meets or exceeds federal, state, and/or local requirements.

**Electric vehicle** means any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for energy purposes. Electric vehicle includes: (1) a battery powered electric vehicle; and (2) a plug-in hybrid electric vehicle.

**Electric vehicle charging station** means a public or private parking space located together with a battery charging station which permits the transfer of electric energy (by conductive or inductive means) to a battery or other storage device in an electric vehicle. An electric vehicle charging station is permitted as an accessory use to any principal use.

**Electric vehicle parking space** means any marked parking space that identifies the use to be exclusively for an electric vehicle.

## **POLICY CONSIDERATIONS**

The Comprehensive Plan does not address electric vehicles or charging infrastructure specifically. However, ensuring that the Town's regulations provide reasonable accommodations for the installation of charging stations recognizes the emerging market for these vehicles, which relates to the Town's economic development goals, not to mention the potential environmental benefits to making electric vehicle charging infrastructure more accessible within the Town.

## **STAFF RECOMMENDATION**

To address inconsistencies within current regulations, it is Staff's recommendation that the following amendments to the UDO be adopted:

- That Section 6.5.3., which indicates those uses expressly prohibited within the Town, be amended by adding "Electric Vehicle Charging Station (as a principal use)" and "Electric Vehicle Battery Exchange Station (as a principal use)" to those uses listed under COMMERCIAL.
- That Section 6.6, Table of Uses and Activities" be amended by deleting "Battery Charging/Exchange Station" and the entire associated row from the use table; by inserting "Electric Vehicle Charging Station" as a permitted Accessory Use within the R-1, R-2, R-3, CR, C-1, C-2, C-3, C-4, SPD-20, SED-80, and SPD-C zoning districts, subject to supplemental regulations contained in Section 7.17; and, by inserting "Electric Vehicle Battery Exchange Station" as a permitted Accessory Use within the C-2 zoning district, subject to supplemental regulations contained in Section 7.16.
- That Section 7.17 be amended as follows:

### **SECTION 7.17 ELECTRIC VEHICLE BATTERY CHARGING STATION/~~BATTERY EXCHANGE.~~**

Battery charging stations and battery exchange stations shall be permitted **only** as an accessory use in accordance with Section 6.6, Table of Uses and Activities, subject to the following requirements:

**7.17.1. Standards for Single-Family and Two-Family Dwellings.** Electric vehicle battery charging stations shall be allowed as an accessory use to single-family and two-family dwellings. The use of such stations shall be limited to the occupants of a dwelling, and the guests thereof. When located outside a structure, such stations shall be subject to the same dimensional regulations as HVAC and other similar mechanical and electrical equipment. Such stations shall not exceed residential building code electrical limitations. ~~Electric vehicle charging stations should be reserved for parking and charging of electric vehicles only.~~

~~7.17.2. Electric vehicles may be parked in any space designated for public parking, subject to the restrictions that would apply to any other vehicle that would park in that space.~~

**~~7.17.3. Battery Charging Stations.~~**

~~For land use compatibility purposes, the charging activity should be proportionate to the associated permitted use. Electric vehicle charging station(s) shall be permitted in a single or multi-family garage designed to service the occupants of the home/dwelling unit as an accessory use. Accessory single-family charging stations shall not exceed residential building code electrical limitations. Whereas, charging station(s) installed in a parking lot for non-single-family residential use are expected to have intensive use and will be permitted to have multiple “rapid charging stations” to serve expected demand.~~

**~~7.17.4. Battery Exchange Stations.~~**

~~Exchange stations are permitted in any commercial or industrial zoning district, provided, however, all other requirements for the building or space the use occupies are satisfied, including but not limited to the UDO, fire code, and building code requirements. This use is specifically prohibited in exclusively residential or conservation/recreation zoning districts.~~

**7.17.52. Design Criteria Standards for Institutional, Commercial and Multi-Family Development.**

The following criteria standards shall apply to the accessory installation and use of electric vehicle battery charging stations: facilities.

**7.17.5.1. Generally.** Electric vehicle battery charging stations shall be located in close proximity to the parking spaces that they are intended to serve and shall be subject to the same minimum yard and/or setback requirements to which parking spaces and mechanical equipment are subject. Electric vehicle battery charging stations accessory to a nonconforming use shall not be considered to be an extension or expansion of such nonconforming use.

**7.17.5.12. Number Permitted Required; Reserved Use of Spaces; Required Parking.** As an accessory use, the number of parking spaces available for the charging of electric vehicles shall not be more than 40% of the total available parking spaces. ~~This is an optional improvement. No minimum number of stalls applies. Provided, if electric vehicle stalls are reserved for electric vehicles, stalls to be used as charging stations shall not be used to meet the minimum parking requirements for the use.~~ Vehicles using an electric vehicle battery charging station shall be parking in a parking space, with one parking space meeting the stall width requirements of Table 10-8, Commercial Parking Area Requirements, provided per station charging port. Parking

spaces used to access electric vehicle battery charging stations are not required to be reserved by the property owner for the parking of electric vehicles; however, if such spaces are reserved for the use of electric vehicles, such spaces shall not be used to meet minimum required parking for the site and use.

~~7.17.5.2. **Generally.** Location and provision of electric vehicle parking will vary based on the design and use of the primary parking lot, keeping in mind flexibility will be needed in various parking lot layout options.~~

~~7.17.5.3. **Signage to Identify.** Each electric vehicle battery charging station and associated parking spaces should provide signage indicating the voltage and amperage levels, and any applicable limitations on the use or reservation of parking spaces, limits on time, days and hours of operation, fees, and/or safety information. Spaces not reserved for electric vehicles shall also indicate that such spaces are not so reserved. charging station space should be posted with signage indicating the space is only for electric vehicle charging purposes. Days and hours of operation should be included if time limits or tow away provisions are to be enforced by the owner.~~

~~7.17.5.4. **Maintenance.** Charging station equipment should be maintained in all respects, including the functioning of the charging equipment.~~

~~7.17.5.5. **Accessibility.** Where charging station equipment is provided within an adjacent pedestrian circulation area, such as a sidewalk or accessible route to the building entrance, charging equipment shall not interfere with accessibility.~~

~~7.17.5.6. **Lighting.** Where charging station equipment is installed, adequate site lighting should also be provided unless charging is for daytime use only.~~

~~7.17.5.7. **Notification of Station Specifics.** Information on the charging station identifying voltage and amperage levels and any time of use, fees, or safety information.~~

- That Table 10-2, Required Parking by Use, be amended to delete the Battery Charging/Exchange Station use and the parking requirement therefore.
- That the following definitions in Appendix A, Definitions, be amended as noted:

~~**Battery charging station** means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed federal, state, and/or local requirements.~~

**Electric vehicle battery Battery exchange station** means a fully automated facility that provides through labor or automation the exchange and replacement of will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery batteries in electric vehicles with a fully charged battery through a fully automated process, which meets or exceeds federal, state, and/or local requirements. Such stations may be provided as a service or accessory to an automobile repair use; such stations are not permitted as a principal use.

**Electric vehicle charging station** means an electrical component assembly or cluster of component assemblies designed to charge batteries within electric vehicles and which meet or exceed federal, state, and/or local requirements. Such stations may be privately available or available to the generally public depending upon the use to which they are accessory; stations are not permitted as a principal use ~~a public or private parking space located together with a battery charging station which permits the transfer of electric energy (by conductive or inductive means) to a battery or other storage device in an electric vehicle. An electric vehicle charging station is permitted as an accessory use to any principal use.~~

~~**Electric vehicle parking space** means any marked parking space that identifies the use to be exclusively for an electric vehicle.~~

With regard to the Planning Board's review and action, Staff recommends consideration of the following UDO provisions:

*3.5.3. Action by the Planning Board.*

*3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*

*3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*

*3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

The Planning Board should also take into account the following UDO provisions applicable to review and action on the text amendment by the Board of Commissioners:

*3.5.4. Action by the Board of Commissioners.  
Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*

*3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

*3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

*3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.*

*3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.*

*3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.*

*3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

*3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

*3.5.4.5.3. A statement approving the amendment and containing at least all of the following:*

*Consideration of text amendments to the Unified Development Ordinance pertaining to electric vehicle battery charging and battery exchange stations*

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*3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.*

*3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.*

*3.5.4.5.3.3. Why the action was reasonable and in the public interest.*

*3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*

*3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

**Attachments:**

**None**